

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 16 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0063-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
BENJAMIN SATATHITE,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20032475

Honorable Howard Fell, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Benjamin Satathite

Tucson  
In Propria Persona

B R A M M E R, Judge.

¶1 After a jury trial, Benjamin Satathite was convicted of two counts of armed robbery. The jury found the offenses were dangerous in nature; the trial court found Satathite had five prior felony convictions and sentenced him to aggravated, concurrent

prison terms of twenty years on each count. This court affirmed his convictions and sentences on appeal. *State v. Satathite*, No. 2 CA-CR 2004-0154 (memorandum decision filed Nov. 14, 2005). Satathite then filed his first petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., raising a claim of ineffective assistance of trial counsel. The trial court summarily dismissed that petition. This court granted Satathite's subsequent petition for review but denied relief. *State v. Satathite*, No. 2 CA-CR 2007-0324-PR (memorandum decision filed Apr. 10, 2008).

¶2 In his second petition for post-conviction relief, Satathite claimed both his appellate counsel and his first Rule 32 counsel had been ineffective because they had failed to argue that the trial court erroneously had admitted photographs showing the tattoos on Satathite's arms. He contended the photographs were unfairly prejudicial because they also showed Satathite wearing a wristband issued by the Pima County Detention Center. The court summarily dismissed the petition and this petition for review followed. We will not disturb a trial court's ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶3 Satathite asserts essentially the same arguments on review that he raised in his petition below.<sup>1</sup> Although the trial court appears to have reached at least partially the merits of Satathite's claims, we need not do so here. Satathite's claim of ineffective assistance of appellate counsel is precluded. *See* Ariz. R. Crim. P. 32.2(a)(3) (precluding relief on claims waived "at trial, on appeal, or in any previous collateral proceeding"); *State v. Bennett*, 213 Ariz. 562, ¶ 14-16, 146 P.3d 63, 67 (2006) (claim of ineffective

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<sup>1</sup>To the extent Satathite has attempted to raise in his petition for review a claim pursuant to *Blakely v. Washington*, 542 U.S. 296 (2004), we rejected such claim on direct appeal and do not address it further.

assistance of counsel may only be raised in successive petition for post-conviction relief if, in order to raise claim in earlier petition, counsel would have had to assert his or her own ineffectiveness). Satathite could have raised a claim of ineffective assistance of appellate counsel in his first Rule 32 petition because he was represented by different counsel in that proceeding. He therefore was precluded from doing so in the current petition.

¶4 Satathite’s claim of ineffective assistance of his first Rule 32 counsel simply is not cognizable under Rule 32 for a non-pleading defendant. *See State v. Krum*, 183 Ariz. 288, 292 & n.5, 903 P.2d 596, 600 & n.5 (1995) (“when a defendant is entitled to a direct appeal with the assistance of counsel, there is no constitutional right to counsel or effective assistance in post-conviction proceedings” and therefore no “valid, substantive claim under Rule 32” for “ineffective assistance on a prior [post-conviction relief] petition”). Thus, we find no abuse of discretion in the trial court’s summary dismissal of his petition for post-conviction relief.

¶5 Although we grant Satathite’s petition for review, we deny relief.

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Judge